**ANNEX 23**

**Third Party’s Joint liability Form**

*[Instructions:*

* *Please, remember to insert the number of the procedure in the header;*
* *Text in yellow means that text needs to be entered;*
* *Text between [ ] and in yellow means that there are options of which one shall be chosen;*
* *Text between [ ], in italics and in green are instructions/clarifications.*

*Ensure that all instructions and optional text which is not applicable is deleted before issuing the document.]*

*[This form shall be filled in only in case the Third Party provides* *the* *whole or a large part of the financial capacity AND upon F4E’s request (i.e., if F4E demands the tenderer and the Third Party to be jointly liable for the performance of the contract, in line with section 5.2 of the Invitation to tender)]*

**Third Party’s Joint Liability Form**

Official name of the third party and address of registered office, (the “Third Party”), represented for the purpose of signature of this undertaking by name, surname and position within the economic operator’s organisation, duly authorised to represent and act on behalf of the Third Party.

Recognises that the selection by Fusion for Energy of official name of the tenderer, (the “Tenderer”, and once the contract is signed, the “Contractor”) for procurement procedure F4E-XXX-0000 relies on the financial capacities of the Third Party.

Therefore the Third Party shall put at the disposal of the Contractor, in case of signature of the contract resulting from procurement procedure F4E-XXX-0000 (the “Contract”), all financial resources necessary for the fulfilment of the contractual obligations under the Contract.

As a consequence, the Third Party hereby expressly:

1. commits to ensure that the Contractor performs all its contractual obligations in conformity with the provisions and within the limits of the Contract according to their true intent and meaning;
2. commits to provide the Contractor with such financial support and assistance as may be required to ensure the fulfilment of all its obligations under the Contract and within the limits of the Contract;
3. commits to take over the obligations stemming from the Contract, and to perform or cause to be performed such obligations under the terms and conditions of the Contract, in case the Contractor ceases to carry out its business, or is otherwise subject of insolvency or winding up or analogous proceedings, or in case of a serious breach of the obligations under the Contract on the part of the Contractor;
4. accepts to be jointly and severally liable with the Contractor to Fusion for Energy for the performance of the Contract and for any loss or damage arising as a result of the performance or breach of Contractor’s obligations.

It is understood and agreed that the obligations and liabilities of the Third Party under this undertaking shall be concurrently reduced and discharged by the amount and to the extent of the Contractor obligations duly fulfilled by the Contractor and paid and discharged by Fusion for Energy pursuant to the Contract.

Nothing herein shall be construed as imposing greater liabilities on the Third Party than are imposed on the Contractor under the Contract. The Third Party shall be entitled to all defences, limitations and exclusions of liability available to the Contractor under the Contract.

The Third Party and Fusion for Energy may not assign or otherwise transfer their obligations or rights under this undertaking to any other party without the prior consent of the Third Party or Fusion for Energy as the case may be, the exercise of which shall be in Fusion for Energy’s or the Third Party‘s sole discretion which shall not be unduly retained.

This undertaking shall become effective upon the date the Contract between the Contractor and Fusion for Energy enters into force and shall remain in full force and effect until the end of the warranty period as defined in the Contract. If the Contract does not come into full force and effect within a year of the date of signature of this undertaking, or if Fusion for Energy does not enter into a contract with the Tenderer, this undertaking shall be void and ineffective.

The commitments entered into by the Third Party through signature of this undertaking are firm, irrevocable and unconditioned for the same period of time.

The Third Party commits to provide Fusion for Energy with the evidence of the conditions for participation laid down in the contract notice and the *Invitation*[[1]](#footnote-2).

This undertaking is governed by the law governing the Contract. Any dispute that may arise between Fusion for Energy and the Third Party under this undertaking shall be dealt with in accordance with the provisions for settlement of disputes of the Contract and the courts having jurisdiction for matters relating to the Contract shall have sole jurisdiction in respect of matters relating to this undertaking.

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| Name and position .……….……………….…………………………………………………  Duly authorised to represent and act on behalf of the Third Party:  Name of the company/organisation .……….……………….…………………………………………………  Date and signature .……….………………… .……….……………….………………………………………………… |

1. “*Invitation”* is to be understood as:

   the invitation to participate, the first step of the restricted procedure, the competitive procedure with negotiation and the competitive dialogue (selection phase), or,

   the invitation to tender, in case of a call for tender. [↑](#footnote-ref-2)